

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF MISSISSIPPI
SOUTHERN DIVISION

DAPHNE D. VIVERETTE

PLAINTIFF

VERSUS

CIVIL ACTION NO. 1:15CV183-KS-RHW

THE CITY OF MOSS POINT, MISSISSIPPI

DEFENDANT

PROPOSED FINDINGS OF FACT AND RECOMMENDATION

By order dated April 20, 2016, the Court granted Defendant City of Moss Point's motion to compel discovery responses and a deposition date for Plaintiff Daphne D. Viverette. Doc. [19]. The Court granted the motion based on Plaintiff's failure to respond to outstanding discovery. Accordingly, the Court set a deadline of May 6, 2016, for Plaintiff to serve complete discovery responses and to provide Defendant with dates on which she would be available for deposition. In the order granting Defendant's motion to compel, the Court cautioned Plaintiff that failure to comply with the Court's order and/or failure to participate in discovery will result in her lawsuit being dismissed for failure to prosecute. It is now nearly two weeks beyond the deadline set for Plaintiff's response. Since the Court entered the order, there is no indication in the docket that Plaintiff has served discovery responses. Nor has Plaintiff filed any pleading or communicated with the Court regarding this lawsuit. Therefore, the undersigned finds that Plaintiff has failed to prosecute her claim and recommends that the lawsuit be dismissed without prejudice based on her failure to participate in discovery.

RECOMMENDATION

The undersigned recommends that Plaintiff's lawsuit be dismissed without prejudice for failure to prosecute.

NOTICE OF RIGHT TO APPEAL/OBJECT

Pursuant to 28 U.S.C. § 636(b)(1), any party who desires to object to this report must serve and file written objections within fourteen (14) days after being served with a copy unless the time period is modified by the District Court. A party filing objections must specifically identify those findings, conclusions and recommendations to which objections are being made; the District Court need not consider frivolous, conclusive or general objections. Such party shall file the objections with the Clerk of the Court and serve the objections on the District Judge and on all other parties. A party's failure to file such objections to the proposed findings, conclusions and recommendation contained in this report shall bar that party from a de novo determination by the District Court. Additionally, a party's failure to file written objections to the proposed findings, conclusions, and recommendation contained in this report within fourteen (14) days after being served with a copy shall bar that party, except upon grounds of plain error, from attacking on appeal the proposed **factual findings and legal conclusions** that have been accepted by the district court and for which there is no written objection. *Douglass v. United Services Automobile Association*, 79 F.3d 1415, 1428-29 (5th Cir. 1996).

SO ORDERED, this the 19th day of May, 2016.

/s/ Robert H. Walker
ROBERT H. WALKER
UNITED STATES MAGISTRATE JUDGE